

REMARKS

The Office Action mailed October 27, 2009 has been reviewed and carefully considered. Entry of this Amendment and reconsideration of the above-identified application, as amended, in view of the following remarks, is respectfully requested

Claims 1-4 and 7-17 are pending and stand rejected.

Claims 1 and 17 are independent claims.

No claims have been amended.

Claims 1 and 17 stand provisionally rejected under the judicially created doctrine of obviousness over US patent application 10/521,719. Claims 1-4 and 7-17 stand rejected under 35 USC103(a) as being unpatentable over Hermann (EPO 1024626) in view of Dellmo (USPPA 2002/0094087).

With regard to the provisional rejection under the judicially create doctrine of obviousness, applicant respectfully disagrees with and explicitly traverses the rejection. However, in the interest of advancing the prosecution of this matter, applicant respectfully requests that the rejection be held in abeyance until such time that the subject matter claimed in the instant application or in the referred-to patent application issues and the issued claims may then be compared to the claims in the unissued application to determine whether the rejection is still applicable.

With regard to the rejection of claims 1-4 and 7-17 under 35 USC 103(a) as being obvious over Hermann and Dellmo, applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

In rejecting the claims, the Office Action refers to Hermann for disclosing the elements recited, for example, in claim 1 except for the element "wherein said triggering unit is activated when said portable unit and said receiving unit are within a distance to each other such that signal energy from said receiving unit received by said portable unit exceeds a predetermined voltage level."

The Office Action then introduces Dellmo to disclose an automatic voltage controller circuit to teach this missing element. (see OA, page 6).

Hermann discloses a method for exchanging information in a networked pervasive environment, wherein an authenticated and secure session can be achieved. Hermann discloses the initiation of a unidirectional wireless communication channel between a first device and a remote second device, whereby a sequence via the unidirectional wireless communication from the first device to the remote second device is sent in order to furnish the remote second device with encryption information. An encrypted response is sent, via a wireless broadcast medium, to the first device using the encryption information. More specifically, Hermann discloses the user sending from the first device a sequence that comprises an initiating token that contains a public key of the first device and a randomly chosen nonce. The second device responds to the received token by sending a public-key token back to the first device. The public key token created by the second system and sent back to the first device contains the concatenation of the public key of the second device and the received nonce and is encrypted using the public key of the first device. The first device decrypts the received information from the second device and transmits a communication parameter token back to the second device. (see para. 0047).

Hermann, thus, discloses the use of a well-known public/private key system to exchange encryption information between devices.

Hermann further discloses that a user initiates transmission from the portable device by depressing a first button and when the target is lined up with portable device, depressing a second button. (see para. 0054 "the user 7 enables the unidirectional channel 3 by pressing a first button; once activated, the unidirectional channel 3 stays activated for some limited time ... during which the user has the opportunity to transmit the sequence 5 over the directed channel 3 by touching the PAN-enabled surface; (2) the user 7 touches the PAN-enabled surface to actually transmit the sequence 5 over the unidirectional channel.").

Hence, Hermann explicitly teaches a manual transmission activation function controlled by the user.

Dellmo discloses a secure wireless LAN device including a housing, a wireless transceiver carried by the housing, a medium access controller and a cryptography circuit. The cryptography circuit encrypts both address and data information for transmission. Dellmo discloses in Figure 7, a block diagram of a transceiving device including a processor, a modem and an RF/IF converter. Dellmo further discloses a power amplifier in the outputting circuit (as evidenced by the arrow direction of the signal lines) "which may also include an external detector so that an accurate automatic level control can be implemented." (see para. 0042).

Dellmo disclose that the power amplifier (PA) may amplify the output signal prior to transmission and provide a detector that monitors the output power to regulate and maintain the output power at a desired level. The output power may be maintained at a desired level by adjusting the gain of the PA to increase and/or decrease the level of the output power.

Even if the power amplifier with detector of Dellmo were incorporated into the teachings of Hermann, the combination would fail to disclose the claim element of a "triggering unit being activated when said portable unit and said receiving unit are within a distance to each other such that signal energy from said receiving unit received by said portable unit exceeds a predetermined voltage level," as the combination of the cited references would include a trigger unit, as describe by Hermann, wherein a user pushes a button to activate the device.

Nowhere does either Hermann or Dellmo disclose the trigger unit of the portable device being activated when a signal is received from the receiving unit that exceeds a predetermined voltage level. In fact Hermann discloses pressing a button to active the portable unit independent of receiving any signal level from the target.

Thus, the device formed by the combination of Hermann and Dellmo is activated when the user depresses a button and the output power transmitted thereafter is regulated and maintained at a desired level. The desired output

transmission level may be based on an expected distance of the second device. (however, this feature is not disclosed by Dellmo).

In providing a motivation for combining the teachings of Hermann and Dellmo, the Office Action asserts "the desirability and advantage of modifying Hermann to control a transmission data signal by employing the well known feature of automatic voltage control as disclosed by Dellmo."

However, even if there is an advantage in controlling the transmission data signal using automatic voltage control to limit the output transmission power to conserve battery power, this feature would require the combined device of Hermann and Dellmo to further include a detector for measuring a strength of a signal received from the other device. This receive detector may then be used to set a desired transmission power that the detector of Dellmo would use as a reference to adjust the gain of the PA.

Neither Hermann nor Dellmo teach the use of a detecting unit to measure the received signal power as the PA of Dellmo measures the output transmission power of the portable device.

Accordingly, the combination of Hermann and Dellmo fails to provide any motivation to perform a measurement of the received power or of activating the portable device when the received signal strength exceeds a known level, as is recited in the claims.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations. However, the Court in KSR v. Teleflex (citation omitted) has held that the teaching, suggestion and motivation test (TSM) is merely to be used as a helpful hint in determining obviousness and a bright light application of such a test is adverse to those factors for determining obviousness enumerated in the Graham v. John

Deere (i.e., the scope and content of the prior art, the level of ordinary skill in the art, the differences between the claimed invention and the prior art and objective indicia of non-obviousness) (citation omitted).

In this case, the combination of Hermann and Dellmo cannot render obvious the subject matter recited in the independent claims 1 and 17, as the device resultant from the combination of Hermann and Dellmo fails to disclose the element of activating a short range transmission when a received signal strength exceeds a known level.

With regard to the rejection of the remaining claims, these claims depend from independent claims 1 and 17, and, hence, these claims are not rendered obvious by the combination of Hermann and Dellmo for at least their dependency upon an allowable base claim.

For the remarks made herein, applicant submits that the objections and rejections have been overcome and respectfully requests that the objections and rejections be withdrawn.

For all the foregoing reasons, it is respectfully submitted that all the claims are in allowable form and the issuance of a Notice of Allowance is respectfully requested.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or point of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action are conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has elected to cancel

claims 5, 6 and 18 solely to expedite the prosecution of this matter. Applicant expressly reserves the right to re-prosecute the subject matter recited in the claims prior to this Amendment in one or more continuing application.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below.

No fees are believed necessary for the timely filing of this paper.
However, if any fees are determined to be necessary for filing this paper, the
Examiner is authorized to charge Deposit Account no. _____, for the
payment of such fees.

Respectfully submitted,
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